

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF SOUTH DAKOTA

IN THE MATTER OF THE REQUEST OF WWC)	
LICENSE LLC FOR CERTIFICATION)	ORDER DENYING
REGARDING ITS USE OF FEDERAL)	CERTIFICATION
UNIVERSAL SERVICE SUPPORT)	TC02-156

On September 11, 2002, WWC License LLC (Western Wireless), a subsidiary of Western Wireless Corporation, submitted a letter requesting that the Public Utilities Commission (Commission) notify the Universal Service Administrative Company (USAC) and the Federal Communications Commission (FCC) that it is eligible to receive federal high-cost support in accordance with 47 U.S.C. section 254(e). Western Wireless attached an affidavit which it stated "shows that Western Wireless self-certifies that it will only use the federal high-cost support it receives for the intended purposes."

On September 23, 2002, the Commission received an additional affidavit from Western Wireless. Attached to the affidavit was Exhibit A which contained responses to questions from Commission Staff regarding its filing. By data request dated September 13, 2002, Commission Staff had requested that Western Wireless "provide estimated year 2003 expenditures for provision, maintenance, and upgrading of facilities and services supported by federal universal service funding for WWC License LLC." In response, Western Wireless stated that its plans for launching universal service had not been finalized so "the expenditures for providing, maintaining, and upgrading facilities and services in 2003 cannot currently be estimated." Western Wireless attached a press release from September of 2001 stating that by the end of 2001, "the company will have invested approximately \$119 million in South Dakota's wireless infrastructure...." The response further stated that "[a]lthough it is impossible to predict the precise amount to be spent in 2003, the investments made in 2001 are (1) capital in nature and, therefore, to be amortized into future years, and (2) suggest similar investments in future years." The response further stated that Western Wireless had not commenced providing universal service pursuant to its designation by the Commission, but had received a total of \$795,347 from the federal Universal Service Fund to serve the Pine Ridge Reservation pursuant to Western Wireless' designation as an ETC by the FCC.

At its September 24, 2002, meeting, the Commission considered this matter. Given the interrelated nature of the dockets, the Commission also considered Western Wireless' compliance filing for Docket TC98-146, In the Matter of the Filing By GCC License Corporation for Designation as an Eligible Telecommunications Carrier. In that docket, Western Wireless had been granted ETC status for non-rural areas in South Dakota, and had been granted ETC status for some rural areas, upon its compliance with certain conditions as stated in the order. Western Wireless did not appeal or ask for reconsideration of the conditions. The Commission points out that although the order regarding the rural areas had been issued on October 18, 2001, Western Wireless did not make a compliance filing until August 29, 2002. The South

Dakota Telecommunications Association (SDTA), an original intervenor in Docket TC98-146, objected to the Commission approving Western Wireless' compliance filing, stating Western Wireless has not shown that it has complied with the Commission's order. In addition, Commission Staff had issued a data request to Western Wireless regarding the compliance filing. However, Western Wireless had not responded to the request until September 24, 2002 (the day of the Commission meeting), and thus, Staff did not have sufficient time to review Western Wireless' responses. However, Commission Staff's initial reaction to Western Wireless' responses was that Staff would have additional questions based on the responses. Thus, the Commission deferred action on the compliance filing in Docket TC98-146, which meant that Western Wireless had not yet met the conditions to become an ETC in the rural areas in South Dakota.

Since Western Wireless is not yet an ETC for the rural areas as stipulated to by Western Wireless and SDTA in Docket TC98-146, the Commission finds it is unable to certify Western Wireless for high-cost support for those areas. The Commission further finds that Western Wireless could have avoided any delay in receiving certification if it had filed its compliance filing in a timely manner, and answered Staff's data request in a timely manner. Instead, Western Wireless waited for almost one year to submit its compliance filing and then failed to promptly respond to Staff's questions in a manner that would have enabled Staff, as well as the Commission, to review any changes to its compliance filing. The Commission was then required to defer action on the compliance filing in Docket TC98-146¹.

In addition, the Commission points out that pursuant to the FCC's order, the FCC had determined that states must file annual certifications with the FCC in order "to ensure that carriers use universal service support 'only for the provision, maintenance and upgrading of facilities and services for which the support is intended' consistent with section 254(e)." Fourteenth Report and Order, Twenty Second Order on Reconsideration, and Further Notice of Proposed Rulemaking in CC Docket No. 96-45, and Report and Order in CC Docket No. 00-256, *In the Matter of Federal-State Joint Board on Universal Service, Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non- Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers*, FCC 01-157, ¶ 187 (rel. May 23, 2001) (*MAG Order*). Further, in a prior order, the FCC stated that:

For example, a state could adjust intrastate rates, or otherwise direct carriers to use the federal support to replace implicit intrastate universal service support to high-cost rural areas, which was formerly generated by above-cost rates in low-cost urban areas, that has been eroded through competition. A state could also require carriers to use the federal support

¹ The Commission notes that the areas served by South Dakota's only non rural company, Qwest, are not eligible for high-cost support. The Commission further notes that Western Wireless stated that it had requested certification from the FCC for tribal members living on the Pine Ridge Reservation. The Commission notes that the FCC had previously found that the Tribe has jurisdiction with respect to Western Wireless' service provided to tribal members on the Pine Ridge Reservation. *See In the Matter of Western Wireless Corporation Petition for Designation as an Eligible Telecommunications Carrier for the Pine Ridge Reservation in South Dakota*, Memorandum Opinion and Order, CC Docket No. 96-43, FCC 01-284

to upgrade facilities in rural areas to ensure that services provided in those areas are reasonably comparable to services provided in urban areas of the state.

These examples are intended to be illustrative, not exhaustive. As long as the uses prescribed by the state are consistent with section 254(e), we believe that the states should have the flexibility to decide how carriers use support provided by the federal mechanism. Ninth Report and Order and Eighteenth Order on Reconsideration in CC Docket No. 96-45, *In the Matter of the Federal-State Joint Board on Universal Service*, FCC 99-306, ¶ 96 (rel. Nov. 2, 1999). The FCC stated that it anticipated "that states will take the appropriate steps to account for the receipt of federal high-cost support and ensure that the federal support is being applied in a manner consistent with section 254. . . ." *Id.* at ¶ 95. The FCC required local carriers and competitive eligible telecommunications carriers to "formulate plans to ensure compliance with section 254(e), and present those plans to the state, so that the state may make the appropriate certification to the [FCC]." MAG Order, at ¶ 188. Thus, in order to fulfill its duties under the FCC's order, the Commission has required its carriers to submit estimates of its federal universal service amounts for the upcoming year in addition to its estimated expenditures for provision, maintenance, and upgrading of facilities and services. Western Wireless failed to do so. Instead it submitted a 2001 press release concerning its investment in the year 2001.

It is therefore ORDERED, that the Commission is unable to provide certification to the FCC that Western Wireless will use federal support in a manner consistent with section 254(e).

Dated at Pierre, South Dakota, this 27th day of September, 2002.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that this document has been served today upon all parties of record in this docket, as listed on the docket service list, by facsimile or by first class mail, in properly addressed envelopes, with charges prepaid thereon.

By: _____

Date: _____

(OFFICIAL SEAL)

BY ORDER OF THE COMMISSION:

JAMES A. BURG, Chairman

PAM NELSON, Commissioner

ROBERT K. SAHR, Commissioner